IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRIT No. 2053 of 1994

VISHAKA SINGH & ORS
V/S
REGIONAL COMM. BIKANER & ORS

Mr. SUDHIR SHARMA, for the appellant / petitioner

Mr. OP BOOB, A.G.A. & Mr. JR BENIWAL, for the respondents

Date of Order : 7.2.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

By this petition, the petitioners seek to challenge the orders Annexure 1, 2 and 3, and also seek a direction not to be dispossessed from the land in question.

The facts of the case as pleaded in writ petition are, that one Ram Singh was an evacuee, and as such the land in question was allotted to him, from whom the petitioners purchased by registered sale deed. The private respondents no. 6 and 7 are the daughter and wife of Ram Singh. Respondent no. 5 himself was Ram Singh, who during pendency of the writ petition has expired, and his remaining legal representatives have been taken on record.

It is alleged that the present respondents no. 6

and 7 moved an application under Section 19(2) of the Displaced Persons Compensation & Rehabilitation Act, 1954, hereafter to be referred as the Act, on 19.4.83 alleging the petitioners to be in unauthorised possession of the land and praying that they should be evicted. In this application Ram Singh was impleaded opposite party. Various grounds were given. It was alleged that Ram Singh had illegally transferred the land to the present petitioners even without obtaining Sanad, and without their consent. On this application, the District Rehabilitation Officer vide order dated 4.6.85, ordered resumption of the land in favour of the State, this order has been produced as Annex.1. It is then alleged, that since the property, on allotment came out of the compensation pool, it did not remain part of the compensation pool, as such, action could not be taken under Section 19(2), and aggrieved by this order, an appeal was filed to the Settlement Commissioner, which was allowed, and it was ordered, that on the petitioners giving an undertaking the possession be restored to the petitioners. Aggrieved of this order (alleged to be dated 27.5.88, while it is dated 5.6.85) a revision was submitted under Section 24, to the authorised Additional Settlement Commissioner by the respondents No.6 and 7, which revision was allowed vide Annex.2, dated 28.4.89 whereby the order dated 5.6.85 was restored. Then aggrieved of this order the petitioners submitted petition under Section 33 before Commissioner Rehabilitation, and

respondents No.6 and 7 also submitted a petition, which both were decided by common order, and the orders dated 28.4.89 and 5.6.85 were maintained. This has been produced as Annex.3 (dated 5.4.94). These orders have been assailed in the writ petition, on the ground inter-alia, that the land was not allotted in real sense, but was transferred to Ram Singh against the amount to be recovered in instalment and total instalments were paid before the land was transferred, the sale to the petitioner was bonafide, with consideration, and by registered document, which was also signed by the private respondents No.6 and 7. Then it is alleged that the possession was handed over to the petitioners in the year 1974, which was challenged in the year 1983 only, without explaining any delay. Then it was alleged that this transfer could not be cancelled under Section 19, as it was not an allotment in real sense but was a transfer. Then other ground raised was, that simply because Sanad was not granted, the transfer cannot be said to be illegal, as after payment of price the grant of Sanad is a clerical job. Then it has been contended, that the instructions of the government have not been correctly interpreted in passing Annex.2 and 3. Then it was alleged that no sooner the allotment is made, then the property comes out of compensation pool, and for that issuance of allotment letter is not a condition precedent, and if the property does not remain part of the compensation pool, action under Section 19(2) cannot be taken.

No reply has been filed on behalf of the State or the private respondents.

I have however, heard the learned counsel for the petitioner, Mr. Boob for the State, and Mr. Beniwal for the private respondents, and have considered the material on record.

Before proceeding further I am constrained to notice and observe, that the petitioner has not made a complete disclosure of facts, nor has produced all the relevant documents. A look at the order Annex.2 shows, that thereby two orders, being dated 27.5.88 and 5.6.85, were challenged. By order dated 5.6.85 the land was ordered to be resumed to the State Government, and what was done by order dated 27.5.88 is not disclosed in the writ petition, except making an averment in para 7 of the writ petition, that aggrieved by Annex.1 appeal was preferred before the Additional Collector and Settlement Commissioner respondent No.3, and the same was allowed and it was ordered that after giving undertaking the possession be restored to the petitioners. Then in para 8 it is alleged, that aggrieved of this order dated 27.5.88, a revision was submitted by the private respondent No.6 and 7, which was allowed by order dated 28.4.89. In this background a look at the order Annex.2 shows, that this was a composite revision against

the two orders dated 27.5.88 and 5.6.85. It passes my comprehension, as to whether the respondent No.5 and 6 did not file appeal like the one, said to have been filed by the petitioners, and said to have been allowed vide order dated 27.5.88, if it has been so filed, it is not disclosed as to what has been out come, and if it has not been filed, then how revision could be entertained directly. Apart from the fact that even the copy of the order dated 27.5.85 has not been produced by the petitioners. Omission to make complete discloser, and failure to produce such important documents, do sufficiently entitle me to even dismiss the writ petition, on this sole ground. However, bearing benevolence, I have heard learned counsel on merits and am also considering the case on merits as well.

At the outset, it may be observed that the orders Annex. 2 and 3 have not been challenged by the private respondents, which were required to be challenged by them, if they were to assail the directions given therein, to resume the land to the State Government.

So far as the controversy between the petitioners and private respondents is concerned, that has been adjudicated against the private respondents, by finding, that these persons were consenting parties to the sale, and the sale deed does bear their thumb marks. In that view of the matter, there is no lis, surviving between the

petitioners and the private respondents.

Then the only question surviving is, as to whether on account of the petitioners having purchased the land from the allottee, the order of resumption could be passed or not? It appears from perusal of page 3 of Annex. 2, that the Collector had ordered delivery of possession of land to the purchasers pursuant to some orders of Rehabilitation Department, dated 16.10.87, but then copy of that order has also not been produced, and in view of non-production of the copy of the order dated 27.5.88, I am at a loss to comprehend, the efficacy and effect of the so called order dated 16.10.87. In this background, a look at the order Annex.2 shows, that sale has been affected by the allottee before payment of sale price, and has rightly been ordered to be resumed, by exercising powers under Section 19(2). It has been considered, that the order dated 16.10.87 has been received after the orders for resumption were passed on 5.6.85, and since then the land is in possession of the government, therefore, that order could not be given effect retrospectively. Then in Annex.3 also, it has been found, that the sale was effected with consent of the private respondents, and the order dated 16.10.87 could not be given retrospective effect, and could be applied prospectively. Thus, the petition was dismissed.

Obviously, it is not in dispute, that the

petitioners are purchaser from the allottee. Under Rule 102 of the Displaced Persons (Com. & Reh.) Rules, 1955, wherein application filed by the private respondents, and consequent whereupon, the order Annex.1 has been passed, does clearly authorise the District Rehabilitation Officer, to cancel the allotment of evacuee property held or occupied by a person.

Now I may deal with the contention raised by the learned counsel for the petitioner in the writ petition about the authority retaining no jurisdiction to pass the order, on account of the property going out of the compensation pool, by virtue of making allotment. The term "compensation pool" has been defined in Section 2 to mean, the pool constituted under Section 14, and Section 14 provides for constitution of the compensation pool from the properties described therein. It appears, that the argument of the learned counsel for the petitioner is based on Section 19(2)(b) of the Act, which contemplates or comprehends a person who is otherwise in unauthorised possession of any evacuee property, or any other immovable property, forming part of the compensation pool; who shall, after he has been given a reasonable opportunity of hearing be liable to be ordered to surrender the possession to the Managing Officer or Managing Corporation. As against this, the present is a case covered by Clause (a) of said sub-section (2), which comprehends a situation, where the

person is ceased to be entitled to any possession of evacuee property, by reason of any action taken under sub-section (1). According to sub-section (1), the Managing Officer or Managing Corporation may cancel any allotment, or terminate any lease, or amend the terms of any lease, or allotment, under which any evacuee property acquired under this Act is held or occupied by a person. How this cancellation shall be made, and on what grounds it can be made, is a field occupied by the provisions of the Rules, and Rule 102 covers the situation. Therefore, the argument, that on the allotment of land the property came out of the compensation pool, and ceases to be part of this compensation pool, so as to disentitle the authorities to take action, or pass order like Annex.1, in my view, is misconceived, and cannot be accepted.

Thus, considering from any standpoint, I do not find any force in the writ petition. The same is, therefore, dismissed. The parties shall bear their own costs.

(N P GUPTA),J.

/Sushil/